

Atty. Docket: 31-CD-5530

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

G. Ian Rowlandson : Group Art Unit: 3626
Serial No.: 09/751,023 : Examiner: Gottschalk, M. A.
Filed: December 29, 2000
Title: AUTOMATED SCHEDULING OF EMERGENCY
PROCEDURE BASED ON IDENTIFICATION
OF HIGH-RISK PATIENT

Hon. Commissioner for Patents
Alexandria, VA 22313

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In accordance with the OG Notice of July 12, 2005, the Applicant hereby requests review of the Final Rejection mailed on March 8, 2006. A Notice of Appeal is being filed concurrently herewith.

In the Final Rejection, claims 1, 4, 5, 7, 11, 16, 19-21, 23 and 24 were rejected under 35 U.S.C. § 102(e) as being anticipated by Bayne (US 2005/0060198). This rejection is erroneous for the following reasons.

In accordance with the teaching of Bayne, whether or not a clinician is sent to a patient's home is determined by the triage processing block (TPB) 114 located at a call center. [See Bayne, ¶ 0032.] The TPB 114 responds to a call for medical assistance by determining whether emergency services or a medical care clinician should be sent to the patient. In the former case, TPB 114 directs the web server 113 to display a message instructing the patient to obtain emergency ambulance services, for example, by dialing "911". [Bayne, ¶ 0071.] In other words, the patient must fend for him/herself and the triage processing block takes no steps to provide emergency medical treatment.

Applicant's independent claims recite that an ECG is acquired and then sent to the computer for automated analysis and automated scheduling. Bayne does not disclose that TPB 114 receives an ECG and determines whether a life-threatening condition exists based on analysis of that ECG. Accordingly, neither claim 1 nor claim 16 can be anticipated by Bayne.

The first step recited in Applicant's claim 1 is "acquiring an electrocardiogram record for a particular patient". For the word "acquiring", the Examiner cites to ¶¶ 0086 and 0089 of Bayne, while for the word "electrocardiogram", the Examiner cites to ¶ 0037, which mentions an electro cardiograph machine. This combination of cites makes no sense. ¶ 0086 of Bayne discloses that the clinician receives dispatch notification from the call center, which may include "information on the patient's reported condition". ¶ 0089 of Bayne discloses that "the clinician device 140 retrieves the patient's medical records" from the medical records center 130 via the Internet. ¶ 0037 of Bayne discloses that various medical care devices, such as an electro cardiograph machine, "may be conveniently stored in a van or other means of transportation" to the patient's home. Each of the foregoing "acquisitions" occurs after the triage process and thus does not represent an ECG "acquired" by TPB 114, which the Examiner later asserts performs an ECG analysis function.

Although not cited by the Examiner, Bayne further discloses that: "If the patient's situation is not an emergency, step 412 leads to step 416, where the triage processing block 114 retrieves the patient's medical records." [Bayne, ¶ 0072.] There is no disclosure that TPB 114 "acquires" an ECG record. Also, medical records are retrieved "[i]f the

patient's situation is not an emergency". This means that the medical records are retrieved after a determination has been made whether the patient requires emergency services, i.e., the medical records are not used in the triage process. Thus, the Examiner's later assertion that the TPB of Bayne analyzes the ECG record for the purpose of providing emergency medical assistance is mistaken.

The second step recited in Applicant's claim 1 is "sending said electrocardiogram record to a computer". The Examiner finds this step in ¶ 0094 of Bayne, which discloses that, in addition to using on-site clinician tools, "the clinician may also employ one or more remotely located medical care devices 132." [Bayne, ¶ 0094] For this purpose, the clinician couples sensors between the clinician device 140 and the patient. The sensors measure various physiological conditions and relay the acquired information to the clinician device, which in turn relays the measurements to the remote device. The clinician device further retrieves any resultant analysis from the remote device. Assuming, for the sake of argument only, that the remote device is an ECG machine, then the Examiner appears to be saying that the ECG record would be sent from the remote device to the clinician device 140 (the latter being a portable computer - see Bayne, ¶ 0039). Thus, the Examiner appears to be reading Applicant's claim limitation "computer" on the clinician device 140.

In the very next paragraph on page 2 of the Office Action, however, the Examiner reads Applicant's claim limitation "computer" on TPB 114. More precisely, the Examiner finds the claim limitation "said computer determining that said particular patient has a high probability of acute coronary

syndrome based at least partly on an automated analysis of data in said electrocardiogram record" in ¶ 0073 of Bayne. ¶ 0073 does not mention either ECG analysis or acute coronary syndrome. Nor does ¶ 0073 "suggest" the use of electrocardiogram record data.

¶ 0073 of Bayne discloses that the triage processing block "determines the appropriate clinician type and equipment required to treat the patient's reported condition." However, as seen in Figure 4 of Bayne, this occurs only if a determination has been made during triage that there is no emergency. Obviously, acute coronary syndrome is an emergency, in which case the triage processing block would never get to step 418 of determining the required clinician type. In an emergency, no clinician is sent to the Patient's home. Therefore the Bayne system does not envision calling a cardiologist to go to the patient's home if the patient is suffering from acute coronary syndrome.

For similar reasons, the Examiner is wrong when he states that Bayne teaches using "an expert system software module for performing diagnosis" by "operating on electrocardiogram data".

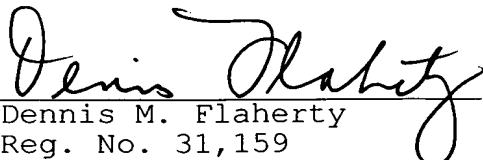
Bayne does not disclose that TPB 114 receives an ECG record. Moreover, it is nonsensical to assume that the expert system incorporated in the triage processing block would diagnose an emergency condition such as acute coronary syndrome in the face of the clear disclosure in Bayne that his system is not designed to treat patient's who require emergency medical treatment. Thus, Bayne teaches away from providing a computer that will analyze ECG data to determine whether the patient is suffering from acute coronary syndrome.

Nor does Bayne teach anything about automated scheduling. The Examiner cites ¶ 0098 of Bayne for the proposition that the clinician can utilize the clinician device to complete an on-line hospital admission process. Purportedly, this would take the form of the clinician providing a predetermined message and "the clinician device - i.e., a computer - scheduling the procedure" (page 5 of action). This rationale is flawed. In the first place, admission to a hospital is not the same thing as scheduling "an emergency procedure". The term "scheduling" implies the setting of a time and place for the emergency procedure. Bayne neither discloses nor suggests this. Again the Examiner merely assumes that which is not explicitly disclosed in Bayne. Secondly, the Examiner has again switched gears and now reads the claim limitation "computer" on the clinician device 140, whereas in connection with the purported ECG analysis, the triage processing block 114 was the "computer".

In view of the foregoing, Applicant submits that Bayne does not anticipate any claim. The rejection of dependent claims 2, 3, 6, 8-10, 17, 18, 22, and 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Bayne in view of Admitted Prior Art is mistaken at least for the same reasons.

Respectfully submitted,

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Date


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June 8, 2006

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